

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

DAVID H.,

Petitioner,

v.

THE SUPERIOR COURT OF KINGS  
COUNTY,

Respondent;

KINGS COUNTY DEPARTMENT OF  
HUMAN SERVICES,

Real Party in Interest.

F074152

(Super. Ct. No. 15JD0440)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDING; petition for extraordinary writ review. Jennifer Giuliani, Judge.

Ronald W. Gilleo, under appointment by the Court of Appeal, for Petitioner.

No appearance for Respondent.

Colleen Carlson, County Counsel, and Rise A. Donlon, Deputy County Counsel,  
for Real Party in Interest.

-ooOoo-

---

\* Before Levy, Acting P.J., Kane, J. and Poochigian, J.

David H. is the biological father of his now 10-month-old son, D.A. David contends the juvenile court erred in denying him presumed father status and reunification services and setting a Welfare and Institutions Code section 366.26 hearing.<sup>1</sup> He seeks an extraordinary writ to overturn the juvenile court's paternity finding and its orders denying him services and setting the section 366.26 hearing. We deny the petition.

### **PROCEDURAL AND FACTUAL SUMMARY**

Two-week-old D.A. was removed from the custody of his mother, Catrina,<sup>2</sup> in December 2015 by the Kings County Human Services Agency (agency) after Catrina was arrested on drug and child endangerment charges. Catrina remained incarcerated throughout these dependency proceedings.

The juvenile court ordered D.A. detained pursuant to a dependency petition filed by the agency. At the detention hearing, Catrina testified that she did not know the identity of D.A.'s father. She said she was living on the streets and in three homes when she conceived him. She had sex with several men during that time but did not know their names.

In January 2016, the juvenile court exercised its dependency jurisdiction over D.A. and ordered reunification services for Catrina. The court set the six-month review hearing for July 2016.

In early February 2016, David contacted the agency, claiming to be D.A.'s father. He completed a "Parentage Inquiry-Juvenile" (JV-500) and a "Declaration" (MC-030). He declared there was a strong possibility he was D.A.'s father and he provided Catrina food, shelter, and emotional support during her pregnancy. He requested paternity testing and stated he would provide for all of D.A.'s needs if he was determined to be D.A.'s biological father.

---

<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Catrina did not file a writ petition.

In March 2016, David completed a “Statement Regarding Parentage” (JV-505) in which he stated that he did not know if he was D.A.’s father but requested paternity testing and an attorney. He did not claim to have established parentage, married Catrina, lived with D.A., or supported D.A. Nor did he claim that D.A. spent time with his family or that he participated in activities with D.A. Instead, he expressed his understanding that D.A. did not have a father and his belief that “every child needs a Dad.”

At an interim hearing in March 2016, the juvenile court appointed counsel for David, deemed him D.A.’s alleged father, and ordered paternity testing for him. David provided a sample for genetic testing in May 2016.

The juvenile court calendared a paternity review hearing and continued it several times pending receipt of the paternity results. The agency received the results in June 2016, indicating that David could not be excluded as D.A.’s biological father.

Social worker Patricia Aguilar met with David and informed him of the paternity results. He was surprised and said he did not want to be D.A.’s father but would “step up” and take care of his responsibility and would possibly agree to family reunification services. Aguilar offered David a visit that same week but he declined stating he was busy. He also balked at the two-hour visitation stating it was too long and he did not know what to do with a baby for that length of time. He preferred 30 minutes. He also said he would like his family present for the visit. Aguilar told him his family could be present for the last 30 minutes. He did not agree with that either.

David informed Aguilar that he served seven months in prison in 2014 for willful cruelty to a child. He also said that he had a 15-year-old daughter who was not in his custody because he could not take care of her. He denied any illegal drug use but said he had a marijuana card. When asked why he had the card, he said “because he wanted to.” He said he last used methamphetamine in January 2014 but refused to drug test until he talked to his attorney.

On June 27, 2016, Aguilar supervised a visit between David and D.A. and noticed that David did not demonstrate much emotion upon seeing his son and was inattentive to

him. David left D.A. on the couch by himself and held him without supporting his head or back. When Aguilar cautioned him that D.A. could fall off of the couch or sustain an injury without head and back support, David responded that D.A. was “fine” and ignored Aguilar’s warnings. During the second hour, the visit was conducted outside. David was preoccupied with the arrival of his brother and sister-in-law. When they arrived, David gave D.A. to his sister-in-law who took over his care for the remainder of the visit while David played with another child in the courtyard. At the end of the visit, David placed D.A. in his car seat and handed him to the care providers without demonstrating any affection toward him.

On that same day, David submitted a hair follicle for drug testing. The results, received in early July 2016, were positive for methamphetamine and THC (marijuana).

In July 2016, the agency filed its report for the six-month review hearing and informed the juvenile court that Catrina had not been able to participate in services while incarcerated. However, she anticipated being released on probation with conditions to participate in a dual diagnosis program. She expressed her love for D.A. and was happy that he was living with her father and step-mother. The agency recommended the court terminate Catrina’s reunification services and set a section 366.26 hearing for D.A. The agency also recommended the juvenile court deny David reunification services.

In July 2016, the juvenile court convened the six-month review hearing. David’s attorney asked the juvenile court to elevate David to D.A.’s presumed father, arguing Catrina prevented him from coming forward sooner and establishing his paternity. The court set a contested hearing and continued the matter for later in the month.

Catrina testified she lived by herself while she was pregnant with D.A. and that she and David were not in a relationship. She found out she was pregnant at one-month gestation and told David at that time of the pregnancy and her due date. He acknowledged that D.A. was his child at that time but did not provide her any support during her pregnancy. She said she was with David the day before she went into labor but did not tell him when she went into labor and did not immediately tell him when D.A.

was born. She told him a week later. David asked to see D.A. but Catrina did not feel comfortable going to David's house because he was using methamphetamine. David did not call after that to inquire about D.A. Asked why she did not say he was D.A.'s father after D.A. was detained, she said she did not know why she did not mention him but she did not want to mention him.

On cross-examination, Catrina testified she told David she was pregnant but also told him she did not think he was the father. She did not tell anyone else that she was pregnant.

David testified he found out Catrina was pregnant in late June 2015 and that she was scheduled for a Cesarean section in mid-December. He did not think the baby was his but knew it was possible. He found out D.A. was born two days after the fact when Catrina called him and left a voice message. He attempted to contact Catrina several times. When he finally made contact, he asked to see D.A. and they agreed to meet on December 26, 2015, but D.A. was taken into protective custody four days before. He found out D.A. had been detained sometime between January 15 and 20, 2016, through a relative.

David further testified about his efforts to appear at the proceedings and elevate his paternity status. In early February 2016, he went to the agency's office and was referred to the minor's advocate because he did not have the case number. Over the following two months, he submitted the parentage forms and was scheduled for paternity testing. He missed two testing appointments, the first because he was not told the date and time and the second because he had a business meeting.

On cross-examination, David testified that Catrina asked him for support in September 2015 because she was living alone. He told her she was welcome at his house as long as she was clean. He estimated she was at his house 90 percent of the time from September until after Thanksgiving. He said her grandparents paid her bills. Catrina denied that David invited her to live with him.

The juvenile court found that David was D.A.'s biological not presumed father and declined to offer him reunification services. The court terminated Catrina's reunification services and set a section 366.26 hearing.

### **DISCUSSION**

Dependency law accords different paternity rights to a man depending upon his paternity designation. The presumed father enjoys the full array of parental rights, including reunification services. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 448-449.) A man may attain presumed father status by satisfying any of the rebuttable presumptions of paternity set forth in Family Code section 7611. Where, as here, a man seeking presumed father status has neither married nor attempted to marry his child's biological mother, he must prove that he openly held the child out as his natural child and physically received the child into his home. (Fam. Code, § 7611, subd. (d).)

David acknowledges he did not receive D.A. into his home and therefore cannot claim the presumption of paternity under the Family Code. Nevertheless, he contends, denying him presumed father status under his circumstances violates his rights to due process and equal protection under *Adoption of Kelsey S.* (1992) 1 Cal.4th 816 (*Kelsey S.*)

In *Kelsey S.*, the California Supreme Court held that Family Code section 7611 and the related dependency statutes violate an unwed biological father's federal constitutional guarantees of equal protection and due process to the extent they allow a mother or third person to unilaterally preclude the father from attaining presumed father status after he, upon learning of his paternity, promptly came forward and demonstrated a full commitment to his parental responsibilities. In determining whether a biological father is a *Kelsey S.* father, the juvenile court considers his conduct before and after the child's birth, including whether he publicly acknowledged paternity, paid pregnancy and birth expenses according to his ability to do so, and promptly took legal action to obtain custody of the child. The court also considers his willingness to assume full custody of the child. If an unwed father fails to demonstrate a full commitment to his parental

responsibilities, the statutes are constitutionally sufficient as applied to him. (*Kelsey S.*, *supra*, 1 Cal.4th at pp. 849-850.)

Applying the principles of *Kelsey S.* to these facts, David contends multiple factors precluded him from attaining presumed father status: Catrina's false statement that she did not know the identity of D.A.'s father, his multiple failed attempts to contact the agency and minor's counsel, the juvenile court's delay in calendaring a paternity hearing, and the agency's delay in scheduling paternity testing. He further contends his efforts to gather and present information, numerous court appearances, and willingness to undergo paternity and drug testing attest to his commitment to his parental responsibilities.

When the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, the question on appeal is whether the evidence was sufficient, as a matter of law, to compel a finding in favor of the appellant. "Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' " (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Thus, in order to establish the juvenile court erred in finding he does not qualify as D.A.'s presumed father, David has to show that the undisputed facts compelled a finding in his favor as a matter of law. (*Id.* at pp. 1528-1529.)

Assuming the facts as David alleges are undisputed, they do not compel a finding he is D.A.'s presumed father. He knew that Catrina was pregnant and that he was possibly the father. He also knew when she delivered D.A. However, he made no attempt to establish his paternity by having his name placed on D.A.'s birth certificate, executing a voluntary declaration of paternity, or seeking a judgment of paternity. Further, once D.A. was born, he made no attempt to assume a parental role by obtaining custody of him or providing for his support.

We conclude David failed to establish as a matter of law that he qualifies as D.A.’s presumed father. We further conclude appellate counsel abandoned the issue whether the juvenile court erred in denying David reunification services.

Section 361.5, subdivision (a) governs the provision of reunification services to a biological father and grants the juvenile court discretion to do so “if the court determines that the services will benefit the child.” David’s appellate attorney contends the juvenile court erred in denying him reunification services, but does not develop the argument.<sup>3</sup> When an appellant complains of error without pertinent argument, we may consider the issues abandoned. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119-1120.) We elect to do so in this case.

We find no error.

#### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.

---

<sup>3</sup> Appellate counsel references placement with David as a nonoffending parent and the statutory timeline on reunification services neither of which pertain to the issue he purports to raise.